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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 98

ARIZONA GROCERY COMPANY, a Corporation, *Petitioner,*
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation, *Respondents.*

ARIZONA GROCERY COMPANY, a Corporation, *Petitioner,*
vs.
SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation, *Respondents.*

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

CHRONOLOGY.

Beginning on page 1 of respondents' brief we find a chronology of the order of events in this proceeding. In this, however, the respondents have omitted to state that on November 3, 1922, a complaint was filed by Phoenix shippers challenging the reasonableness of the rates from California points to Phoenix, Arizona. (R. 277) This insertion should have been made between the dates of July 1, 1922, and February 21, 1923, shown in respondents' brief. In other words, this complaint was filed prior to the date of movement of the first shipment upon which reparation is sought by the petitioner in this case.

The three decisions of the Commission referred to in the chronology are contained in the Transcript of the Record beginning at pages 152, 166 and 182 respectively, and recite the pertinent facts from which its conclusions are reached. Examination of these decisions discloses many significant facts in the later decisions together with new developments justifying the conclusion that a lower maximum rate should have been applied under the changed conditions.

Criticisms of Respondents' Conclusions.

Respondents' brief, when analyzed, is based solely upon one proposition. This is stated by them on page 11 as follows:

> "The rates assessed and the charges collected upon petitioner's shipments were conclusively established as just and reasonable and in conformity with the requirements of the Interstate Commerce Act and of the Commission's valid findings and valid continuing order."

Respondents then proceed to state that

> "The Commission's findings and order in the First Case were continuously in effect without modification through the entire period of movement of the shipments upon which reparation is sought by petitioner;"

but respondents must remember that Sec. 1 of the Interstate Commerce Act was also continuously in effect without modification during this same period.

Respondents then continue on page 12 by saying that

"It seems quite clear that any rate which the carriers might establish not exceeding the maximum thus set was within the terms of the order and constituted full and complete compliance therewith."

Again respondents fail to state that the rate must not only comply with the order of the Commission, but that it must also comply with Sec. 1 of the Interstate Commerce Act.

On page 15 of respondents' brief they state that the voluntary publications of rates less than the reasonable maximum fixed by the Commission must have resulted in rates just as properly termed "Commission-made" as the exact rate named in the Commission's findings and order. If the Commission's order established a conclusively just and reasonable rate, and this is exactly what is insisted upon by respondents, then the action of the carriers in establishing a lesser rate was violative of such order. Respondents will doubtless agree that a rate less than just and reasonable is as much a violation of the Act as one which is more than just and reasonable for the former rate becomes a burden on other traffic and is violative of the Act.

On the other hand, the respondent carriers in this case recognized changes in conditions which warranted them in charging lower rates in 1922 and later years than the Commission found to be maximum reasonable rates in 1920 and 1921. They reduced the rate in July, 1922, and made a further reduction in January, 1924, recognizing the changing circumstances and conditions, and the question before the Commission in the later cases was not as to whether the rates charged by them in 1920, when the first complaint

was filed, were just and reasonable, but whether or not they had reduced them sufficiently under the changed conditions to comply with the requirements of Section 1 of the Act. The Commission and the District Court of Arizona found that they did not.

The carriers by admitting that they possessed the right under the maximum rate order to charge a lesser rate thereby admit that they could have charged 71 cents and 73 cents from southern and northern California points, respectively, without violating the Commission's order in the First Case. The question is whether under the changed conditions they should have done so. Under the law this question was for the Commission to determine.

Many of the statements in respondents' brief in attempting to analyze the effect of the order in the First Case are conflicting. First they insist that the order in the First Case conclusively prescribed a just and reasonable rate. (Respondents' brief, page 11) To support this statement respondents insist that the Commission *prescribed a rate of 96½ cents.* (Respondents' brief page 16.) Then, in opposition to these various statements, they admit that they could and did charge less. As a matter of fact the Interstate Commerce Commission did not prescribe an exact rate of 96½ cents. It is admitted by the carriers that this rate of 96½c was a maximum rate only (Respondents' brief p. 15) and we are at a loss to understand why they at the same time insist in their brief that an exact rate was prescribed. (Respondents' brief, p. 23)

Respondents labor heavily with the proposition that the petitioner insists that the Commission is em-

powered by law to prescribe and authorize a maximum rate which is nevertheless unlawful, that is, unreasonable, and that in rendering its decision in the First Case it undertook to perform that unlawful act. (Respondents' brief pages 23, 24.) This is not the position of the petitioner and nothing in the petitioner's brief leads to such a conclusion. Petitioner does insist, however, that while the Commission may have found at the time of the hearing of the First Case that 96½ cents was the maximum reasonable rate, the Commission did not prescribe this rate as the exact rate to be charged by the carriers but simply stated that any rate charged by the carriers must not exceed 96½ cents. We believe that it is logical to read into this order the requirement of Sec. 1 of the Interstate Commerce Act which places upon the carriers the continuing duty of maintaining just and reasonable rates. Thus the Commission at the time of the hearing established 96½ cents as the maximum reasonable rate. The act not only *requires the establishment* of a just and reasonable rate, but further *requires the carriers to maintain* a just and reasonable rate.

There are many illustrations in the respondents' brief of their inaccuracies and conflicting statements in respect to the character of the order in the First Case. On page 23 of their brief they state

> "The Commission's order * * * was an order *fixing* a reasonable rate."

This is wholly inaccurate and diametrically opposed to their earlier admission that the Commission's order only prescribed the maximum rate and did not *fix* the

rate. On this same page of respondents' brief in considering the First Case they insist that the rates established by the carriers under this order "stood unchallenged." Of course this is wholly incorrect when the record is examined and we find that a complaint was filed by Phoenix shippers on November 3, 1922, challenging the reasonableness of the rates then in effect.

On page 26 of their brief the following appears:

> "Petitioner nevertheless insists that Sec. 15 (1) of the act is to be interpreted as authorizing the Commission to prescribe a maximum rate which may lawfully exceed the absolute level of a just and reasonable rate."

This is subject to the same criticism previously made herein; namely, that while the maximum rate allowed by the Commission at the time of the first hearing may have been the just and reasonable rate, it does not necessarily follow that *this maximum rate* continued as the just and reasonable rate in all the years that followed.

The respondents then consider several cases of the Commission and of this Court, and of other Federal courts, holding that it is the duty of the Commission, upon the filing of a complaint to determine the just and reasonable rates. None of these cases holds that such determination relieves the carriers thereafter of the continuing duty of Sec. 1 not only to establish just and reasonable rates, but to maintain just and reasonable rates as required by that section.

Respondents, on page 35 of their brief, insist that the language of the finding of the First Case is substantially the same as that used in the Third Case

upon which reparation was allowed. Of course, there is a vital difference between the prescription of a rate for the future and the allowance of reparation for the past. The Commission in determining the reasonableness of a rate can not foresee changed circumstances and conditions, and we believe that it is for this reason that it is the Commission's practice to prescribe a maximum rate which permits the carrier to reduce such rate without further order of the Commission when conditions and circumstances warrant such reduction. On the other hand, in determining the reasonableness of a rate for the past, the exact circumstances and conditions existing at the time the rate was charged are before the Commission and are not subject to change. Thus the Commission can fix and determine the exact rate which is just and reasonable during the past period under consideration. In other words, the legislative action of the Commission looks to the future, the conditions and circumstances of which are unknown, while the judicial considers the past, the conditions and circumstances of which are known. *Prentis vs. Atlantic Coast Line Co.*, 211 U. S. 210.

The following statement appears on page 40 of respondents' brief:

> "* * * it necessarily and logically follows that the rates thus published by respondents and applied to petitioner's shipments were both *in fact* and in legal contemplation conclusively established as just and reasonable and in conformity with the requirements of the act."

This conclusion as to just and reasonable "in fact" is inaccurate, in view of the finding by the Commis-

sion in the Second and Third Cases and by the District Court for the District of Arizona in the present proceeding that the rates charged from 1923 to 1925 were *in fact* unjust and unreasonable. The facts referred to in the Commission's first decision were those facts shown to exist in 1920 and 1921.

The respondents, in insisting upon the validity of their rates, on page 43 of their brief, make this statement:

> "Indeed it has never been alleged and it is not now contended that that decision was not valid and lawful in every respect."

It is not the decision in the First Case which is here in question, but the rates which were charged the petitioner by the respondent carriers under the changed conditions in later years. If such rates were invalid because unjust and unreasonable in 1923, then the petitioner, under the provisions of the Interstate Commerce Act, is entitled to reparation, even though they may have been reasonable in 1920 and 1921.

The carriers, in attempting to sustain their position, would lead this Court to believe that if they had charged 71 cents and 73 cents for the shipments made by the petitioner, they would have incurred heavy and severe penalties. (Respondents' brief, page 48.) This is wholly inaccurate, for the actions of the carriers themselves are in conflict with this statement, for they later *voluntarily* reduced the rate as low as 84 cents, as contrasted with the maximum rate order of 96½ cents. In addition, we find this statement:

> "It would be nothing less than a paradox—an utter monstrosity—for Congress to have con-

ferred power upon the Commission to substitute its judgment for that of the carriers and to prescribe with conclusive effect the levels of rates for the future; and with the same enactment to provide that shippers might recover damages in subsequent collateral proceedings before the Commission." (Respondents' brief, page 48.)

No attempt was made by the Commission in the First Case to substitute its judgment for that of the carriers, other than to order them not to exact a rate in excess of 96½ cents. We submit that the changing of the rate voluntarily by the respondents to 86½ cents and then to 84 cents certainly required some act of judgment on their part. Thus the very action of the carriers shows that they did not consider that the judgment of the Commission was intended to be substituted for their own or that by establishing a lower rate any heavy or severe penalties would be exacted. This fallacious reasoning prevails throughout the brief of the respondents, in which they insist at many places and in many ways that the order in the First Case was continuously conclusive. (See particularly pages 49 and 50, Respondents' brief.)

That changed conditions and circumstances might warrant a different rate is admitted by the carriers. (Respondents' brief, pages 50-51.) To excuse their position they attempt to show the inequity which might occur if changed conditions would warrant an increased rate. In this connection they fail to call to the Court's attention the provision of Sec. 15 (7) of the Interstate Commerce Act, which gives to the carrier the right to ask for an increased rate and to secure such increased rate in a summary manner.

Under this section the Interstate Commerce Commission can only suspend the establishment of an increased rate for a period not exceeding 7 months, and if by that time a hearing has not been held, the increased rate will automatically go into effect. In addition, the act provides, in this same section, that when such increased rate is requested by the carrier,

> "The Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." (Title 49 U. S. C. A. Sec. 15 (7))

Thus the carrier is afforded a speedy and efficient method for securing an increase of rates. No such relief is afforded the shipper to secure a reduction of rates, but the shipper is granted the right under the provisions of the act to file a complaint before the Commission alleging the unreasonableness of rates charged and, if the Commission finds such to be true, to allow the shipper damages for the exaction of such unreasonable and unjust rates. These two corresponding rights of carrier and shipper clearly show the intention of Congress to protect both; the carrier in securing a fair return on its investment, and the shipper in securing a just and reasonable rate on all of its shipments.

There is nothing unfair, therefore, in requiring the carriers to keep their rates just and reasonable, since they are in a better position to determine changed circumstances and conditions, including the cost of their own operations. Under the maximum rate order of the Commission in the First Case, the carriers could have reduced without violating such

order the rates to such level as was just and reasonable. If, on the other hand, changed conditions and circumstances would have warranted an advance in rates over the maximum prescribed by the Commission, Sec. 15 (7) gave them a method in which to speedily secure such advance.

Attitude of Commission Towards Allowance of Reparation.

Respondents dealt at length with the fact that the Interstate Commerce Commission had several times requested Congress to relieve it of the burden of reparation. (Respondents' brief, 101-105.) When we consider these reports it becomes perfectly clear that Congress has sanctioned and approved the interpretation of the Interstate Commerce Act adopted by the Commission in allowing reparation upon rates found unjust and unreasonable, even though such rates were equal to or less than rates formerly considered or approved by the Commission. On page 104 of respondents' brief a portion of the 1930 report is quoted and reads as follows:

> "At present the cause of action accrues upon delivery or tender of delivery of the property by the carrier and, with certain exceptions, complaints must be filed within two years thereafter, except for overcharges, for which the period is three years. But now that we have been granted quasi-legislative power to prescribe just and reasonable rates for the future, and the rate structure of the country is so largely that which has come out of many formal proceedings before us, over a long period of years, we are of the opinion that these statutory periods should be substantially reduced."

Thus the Interstate Commerce Commission specifically brought it to the attention of Congress in this report that under its existing practice it is called upon to allow reparation on rates which had previously been considered by the Commission in prior "formal proceedings." Yet, after this specific request on behalf of the Commission that the statutory period for allowing reparation be reduced under such circumstances, Congress took no action and made no attempt to limit or remove the power of the Commission to grant reparation in cases identical with the one presented to this court. We therefore conclude that Congress has approved the interpretation of the act adopted by the Commission and the portion of the 1930 report quoted by respondents and herein above set forth sustains the position of petitioner.

Constitutionality of the Act if Construed as Insisted by Petitioner.

Respondents insist that if the act were construed in the manner insisted upon by petitioner, it would to that extent be unconstitutional and void and in contravention of the due process clause of the Fifth Amendment. (Respondents' brief, page 86.)

This contention ignores the character of the reparation order made by the Commission in the Third Case, upon which the present action is founded. This order of itself is not a judicial determination by any court. At most it only constituted *prima facie* evidence as to the question of justness and reasonableness of the rates charged the petitioner, and the respondents were not deprived of the right to show that the rates actually charged the petitioner were in fact just and reasonable. (Title 49 U. S. C. A. Sec. 16 (2)).

This Court has recognized that a reparation order is unenforcible except by action in court and that Sec. 16 (2) merely establishes a rule of evidence and that a reparation order does not possess the attributes of a court order. *Mills v. Lehigh Valley R. R. Co.*, 238 U. S. 473; *Sou. Ry. Co. v. St. L. Hay Co.*, 214 U. S. 297.

If the rates of 71 cents and 73 cents, found by the Commission in the present case to be the just and reasonable rates, resulted in confiscation of respondents' property because such rates were not the just and reasonable rates, respondents had the right to show such facts at the time this case was heard in the District Court.

> "This provision (Sec. 16 (2)) only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. At most, therefore, it is merely a rule of evidence. It does not abridge the right of trial by jury or take away any of its incidents, nor does it in any wise work a denial of due process of law." *Meeker v. Lehigh Valley R. R. Co.*, 236 U. S. 412, 430.

This Court has recently recognized the right of a shipper to a just and reasonable rate and considered the character of a reparation order of the Interstate Commerce Commission.

> "The Act prohibits every excessive charge, whether exacted directly or obtained by indirection, and its provisions are designed to prevent evasion of the rule that every charge for transportation shall be just and reasonable. The collection by a common carrier of exorbitant charges

is a tort. (Smith vs. Chicago & Northwestern Railway Co., 49 Wis. 443, 5 N. W. 240). Defendant is liable for any violation of the Act by it that caused or contributed to cause damage to plaintiff * * *."

"The Act does not create a cause of action based on the Commission's findings and reparation order for the recovery of money collected as freight charges based on rates alleged to be unjust and unreasonable. It makes a determination by the Commission of the unreasonableness of the rate attacked and the extent that it is, if at all excessive, a condition precedent to suit."

"But no action for damages alleged to have been caused by the exaction of excessive rates for interstate transportation can be maintained in any court, state or federal, in the absence of a prior finding by the Commission that the rate charged was unreasonable." *Lewis-Simas-Jones Co. v. Southern Pacific Company,* 282 U. S. 654.

Petitioner therefore submits that no evidence having been introduced by the respondents showing that the rates of 71 cents and 73 cents were not just and reasonable *in fact* and the statute having made the findings and order of the Commission *prima facie* evidence, the District Court properly found that the rates charged by the respondent carriers were unjust and unreasonable and that the just and reasonable rates which should have been charged were 71 and 73 cents from southern and northern California, respectively. (R. 370) This for the first time became a judicial determination that the rates were unjust and unreasonable. Under this procedure the carriers were not deprived of the right to test the correctness of the rates found by the Commission to be just and reasonable, and they can not therefore com-

plain at this stage of the proceedings that they will be deprived of their property without due process of law.

Consideration of Cases Cited by Respondents.

Respondents cite the case of *Atlantic Coast Line R. R. Co. v. Powe,* 283 U. S. 401. This case dealt with an order of the Railroad Commission of South Carolina prescribing a general rule that semaphore standards and similar structures should not be placed nearer than four feet from the outer edge of the rail. The semaphore in question in that case was some 4 feet 10 inches from the top of the rail. The court held the carrier not liable for damages because of the order of the Commission. This case is not analogous or helpful in the present matter. The safety of the location of a semaphore standard or similar structure would not be affected by subsequent changing circumstances and conditions. Respondents will agree with us, however, that a rate, just and reasonable today, may easily become an unjust and unreasonable rate tomorrow or a year from today, by reason of changed circumstances and conditions. Thus the case cited by respondents dealt with a situation wholly dissimilar to the one here presented.

The case of *Keogh v. C. & N. W. Ry. Co.,* 260 U. S. 156, cited by respondents at page 60 of their brief, does not dealt with the question of just and reasonable rates. In this case the shipper was insisting that he was entitled to competitive rates. This is clearly shown by the following quotation from the opinion of Justice Brandeis in that case.

subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules and regulations, in lieu of those complained of," to be observed.

Section 10423 provides that the order in the proceedings outlined in 10422 shall take effect twenty (20) days after service on the parties except where otherwise provided.

Section 10432 provides that the Commission may after notice and opportunity to be heard, as in the case of complaints, rescind alter or amend any prior order and that such later order "shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules."

It will be observed that these provisions confer upon the Washington Commission authority to designate the rate to be charged or the rule to be fixed. In the case referred to as shown by the findings at page 391 of the decision, the Commission on April 18, 1921, established a distance scale of rates on fuel wood in carload lots and it ordered that the charges should be determined by "taking as a basis a cord of 128 cubic feet." This order purported to operate prospectively and became effective about July, 1921. On March 17, 1922, the Commission changed its order, presumably under authority of Section 10432, after further hearing, and provided that where fuel wood was thrown loosely into the car the charges should be determined by using 192 cubic feet to the car which order was to become effective July 1, 1922. This order also operated only prospectively. Later the Commission undertook to award reparation to a ship-

per who made shipments between the effective dates of the two orders. The court pointed out "that the orders of the Department were prospective and in no way retroactive by their own terms." Furthermore, an exact rate was fixed as the Commission had authority to do making the case somewhat analogous to rates that are fixed under the statutes of other states such as Texas. At any rate, these provisions are so different from those in the Interstate Commerce Act that the determination of this question by the Washington State court can have little weight in the consideration of the interpretation to be given the Federal Act.

At page 110 of brief for respondents it is asserted that the shipper's rights are safeguarded where the carrier charges a rate "conforming to a valid and continuing determination by the Commission." This is but a repetition of the proposition stated on page 40 of respondents brief that the finding as to whether or not a rate is reasonable is a question of fact which when found becomes conclusive thereafter. That it may be conclusive at the time of the finding is hardly open to question but that it may be conclusive at some subsequent time does not follow. This is demonstrated by the quotation in the footnote at page 110 of respondents brief, from *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry.*, 20 I. C. C. 49. The quotation given includes the following significant sentence:

> "The test of reasonableness can be applied only by reference to and upon consideration of *all pertinent facts, circumstances, and conditions affecting the rate in effect at any particular time.*" (Italics ours)

The Supreme Court cited this sentence with approval in the case of *Baer Bros. Mercantile Co. v. Denver & R. G. R. Co.*, 233 U. S. 479, 488. In the latter case the Commission had awarded reparation for the past and reserved the matter of fixing rates for the future for a later decision. The court emphasized the broad distinction between the two functions but at the same time recognized that because of changes in conditions entirely different rates might be prescribed for the future from those upon which reparation should be awarded for the past. The court said that "there may be cases where what was an unreasonable rate in the past is found to be reasonable at the date of the hearing." Referring to the particular shipper who was seeking damages for unreasonable rates charged in the past we quote the following significant passage from the decision of the court:

> "He might have been able to prove unreasonableness as to the past without being able to furnish evidence as to what would be reasonable for the future. Or, the Commission might be in a position to say with certainty that the rates had been unreasonable, and award reparation accordingly, but it might require a protracted and lengthy hearing to establish what would be just for the future. To make the shipper wait on such a finding, and deprive him of his present right to reparation, until the determination of an independent question, would work a hardship not contemplated by the act and not required by any of its provisions."

Quite a similar line of reasoning applies in construing the purpose of Congress with respect to the

authority of the Commission to fix reasonable rates for the future as contrasted with its power to award damages for charging unreasonable rates in the past. The Commission may prescribe a reasonable rate for the future which determination may be based upon insufficient evidence or no evidence. The carrier if adversely affected thereby has a right of appeal under the law but the shipper in such case has no right of appeal to the courts but must content himself with a further petition to the Commission to reconsider the subject. The decision of the Commission is final so far as he is concerned either upon the original or the subsequent determination and his only right is to ask for further consideration by the filing of an additional complaint or motion for reconsideration of the case in question. *Alexander Sprunt & Son, Inc. v. United States,* 281 U. S. 249; *Procter & Gamble Company v. United States,* 225 U. S. 282. In the meantime he may be required to pay charges which were authorized by the former decision but which upon a more complete showing are found to be unlawful. It is a well known fact that frequently such rate investigations run over a period of years and the shipper would therefore be left remediless even though it should be found that the Commission had made an erroneous determination in its original proceeding.

This limitation upon the right of the shipper exists both in the case where he complains of rates and asks for reduced rates for the future and in the case where he complains of rates previously charged and asks for reparation as to the past. If reparation is denied he has no further recourse but, on the

other hand, if it is awarded, the carrier does not have to pay the damages but may force the shipper to go into court where the carrier has a right to a trial *de novo* and have its day in court.

As pointed out in brief for the Interstate Commerce Commission filed herein (page 9) the language of the statute in fixing the absolute duty upon the carriers to charge just and reasonable rates placed a continuing duty upon them from which they are not absolved by the mere fact that at some prior time the Commission had found the rates to be maximum reasonable rates. As stated in the brief:

> "A contrary conclusion would deny to shippers the right to a reasonable rate during all the time the question of reasonableness is being litigated before the Commission, as well as prior thereto, although the Commission finds that the rate had become and was unreasonable during the entire period covered by the award."

The situation is in no wise analogous to that referred to as existing in the several states where the shipper is given a right of appeal from determinations made by the state regulatory bodies.

Another absurd result which would follow the interpretation of the statute as made by the Court below, relates to the effect of the decisions of the Commission where shippers attack rates as being unreasonable and the Commission finds that the evidence submitted does not show the rates to be unreasonable. Many thousands of complaints are filed with the Commmission by shippers alleging that given rates are unreasonable. The Commission is given no power to make a finding condemning a rate

unless it is supported by substantial evidence. In numerous cases the presentations by shippers unfamiliar with all the facts do not present substantial evidence and it is the Commission's duty to find that the rates have not been shown to be unreasonable and to dismiss the complaints. Thus the existing rates are approved although upon a more complete showing the Commission may find that the rates have been shown to be unreasonable and condemn the same. The doctrine advocated by appellees would thus protect the carriers in a case where fragmentary and incomplete evidence is presented to the Commission even though the carriers should be in possession of ample facts to demonstrate the unlawfulness of the rates. The acts of the Commission must be determined by the evidence before it in each case and therefore cannot be given the sanctity of an absolute legislative act which is not confined to the evidential showing to justify its passage. For this reason such acts of the Commission are considered as quasi legislative acts as contrasted with the absolute legislative acts of Congress. The respondents quote the report of the Commission to Congress in 1930 to the effect that "the rate structure of the country is so largely that which has come out of many formal proceedings before us, over a long period of years." If this court should adhere to their interpretation of the law all future proceedings seeking to obtain reparation could be substantially delayed through ingenious devices of carrier counsel while they rested secure from any liability for damages where any such rates have in fact become unlawful in the interim. We submit that such an absurd result cannot be had by implication

and that before such a result should follow there should be clear and explicit language in the statute to require it.

Respectfully submitted,

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